

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 4464 (S/S)/2001

Revadhar Padalia S/o Sri Durga Dutt Padalia.

vs.

State of Uttaranchal through
Secretary, Department of Horticulture
Dehradun & others

Approved for reporting.

~~Not approved for reporting~~

Date of decision. 19.12.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 4464 (S/S)/2001

Revadhar Padalia S/o Sri Durga Dutt Padalia,
R/o village Bhankar, P.O. Pandey Gaon,
Bhimtal, Distt. Nainital.

....Petitioner.

Vs.

1. State of Uttaranchal through Secretary,
Department of Horticulture, Dehradun,
2. Director, Horticulture & Food Preservation,
Chaubatia, Ranikhet, Almora,
3. Deputy Director, Horticulture & Food Preservation
Kumoun Mandal, Nainital,
4. Senior Plant Pathologist,
Govt. Potato Production Farm, Gagar, Bhowali,
Distt. Nainital.

.... Respondents

Sri Tanveer A. Khan, learned counsel for the petitioner,
Learned Standing Counsel for the respondents.

Dated: 19.12.2003:

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus directing the respondents to pay the petitioner equal salary as it is being paid to the other employees of his rank. Further prayer has been made directing the respondents to regularise the petitioner at his own post or as an account clerk under the respondent No.4 or any other place wherever the vacancy occurs.

Brief facts giving rise to the present petition are that the petitioner was appointed as clerk-cum-typist since 5th April 1992 in the office of the respondent No.4. The petitioner has submitted that he is being paid only sum of Rs. 45/- per day on the basis of the daily wagers, though he has completed services of more than nine years.

The petitioner has also referred two letters dated 8th March 2002 and 13th April 2002 in which the Senior Plant Pathologist, Govt. Potato Production Farm has recommended to the following effect:-

“.... इस कार्यालय से दो वर्षों से बार-‘2 ज्येष्ठ लेखालिपिक के सापेक्ष कनिष्ठ लिपिक की तैनाती हेतु लिखने पर श्री ललित मोहन आर्या, कनिष्ठ लिपिक खाद्य प्रसंस्करण विज्ञान, नैनीताल को स्थानांतरित कर आलू प्रक्षेत्र गगर कार्यालय

में योगदान देने हेतु निदेशालय रानीखेत द्वारा निर्देशित किया गया। लेकिन लगता है लिपिक वर्ग में आपके अधीन कई पद रिक्त हैं। ऐसी स्थिति में आपको अपने अधिकार के प्रयोग की आवश्यकता पड़ गयी है। मंडलीय अधिकारी होने के नाते आप ही समस्या का हल कर सकते हैं। इस अधिष्ठान में कार्यरत दैनिक श्रमिक श्री रेवाधर पलड़िया की दक्षता का स्वयं परीक्षण कर अस्थाई रूप से नियुक्त करने पर समस्या का समाधान करने तथा अपने अधिकार का प्रयोग करने का कष्ट करें।

....इस कार्यालय से लगातार दो वर्षों से बार-बार ज्येष्ठ लेखालिपिक की तैनाती हेतु लिखा जा रहा है। जिस क्रम में आप द्वारा श्री ललित मोहन आर्या, कनिष्ठ लेखालिपिक खाद्य प्रसंस्करण विज्ञान, नैनीताल का स्थानान्तरण आदेश निर्गत किये गये थे, परन्तु प्रधानाचार्य, उद्यान एवं खाद्य प्रसंस्करण विज्ञान, नैनीताल द्वारा उन्हें कार्यभार से मुक्त नहीं किया गया। इसके उपरांत इस पद के सापेक्ष अस्थाई नियुक्ति हेतु इस प्रक्षेत्र पर दैनिक श्रमिक के रूप में कार्यरत श्री रेवाधर पलड़िया की दक्षता जाँच के उपरांत अपने स्तर से अस्थाई नियुक्ति देने वावात् उप निदेशक, उद्यान एवं खाद्य प्रसंस्करण कुमाउँ मण्डल, नैनीताल से अनुरोध किया गया था। ऐसा प्रतीत होता है कि इस सम्बन्ध में उनके स्तर से कोई भी प्रगति नहीं हुई। अतः आपसे अनुरोध है कि इस अधिष्ठान में दैनिक श्रमिक के रूप में श्री रेवाधर पलड़िया को ज्येष्ठ लेखालिपिक पद के सापेक्ष कनिष्ठ लिपिक के पद पर अस्थाई नियुक्ति देने की कृपा करेंगे, जिससे इस कार्यालय के सभी लिपिकीय कार्यों का सम्पादन सुचारु रूप से किया जा सके, तथा मैं अपेक्षा करता हूँ कि आप इस सम्बन्ध में व्यक्तिगत रुचि लेकर इस कार्यालय को कार्यों के सम्पादन में हो रही समस्याओं का शीघ्र समाधान करने की कृपा करेंगे”

The grievance of the petitioner is that inspite of the two recommendations the petitioner has not been regularised.

At the time of the admission of writ petition His Lordship Hon'ble Mr. Justice P.C. Verma on 26th September 2001 has directed the respondent for payment of minimum pay-scale to the petitioner on the post which the petitioner is occupying. The order is quoted below:-

“Learned Chief Standing Counsel has accepted notice on behalf of respondents who prays for and is allowed three weeks’ time to file counter affidavit. List thereafter. In the meantime, the respondents are directed to pay minimum of pay-scale to the petitioner of the post.”

Learned counsel for the petitioner has submitted that doctrine of equal work and equal pay applies in the matter in view of the judgment of Apex Court in Prayag Narain and others Vs. State of U.P. reported in (1998) 8 UPLBEC page 2125 which reads as under:-

“12. The doctrine of ‘equal pay for equal work’ enshrined under Article 39 (d) of the Constitution of India of India has been held enforceable in a court of law and not to be only an abstract doctrine though it is not a fundamental right under the Constitution, it is a constitutional goal which must colour the interpretation of Articles 14 and 16 so as to be elevated to the rank of a fundamental right, denial of which must result in an irrational classification. See Randhir Singh

v. Union of India. AIR 1982 SC 879 and Ram Chandra V. Union of India, AIR 1984 SC 541. In union Territory Chandigarh vs. Krishna Bhandari, (1996) 11 SCC 348, it was observed that principle of 'equal pay for equal work' is a fact of principle of equality in the matter of employment guaranteed under Articles 14 and 16 of the Constitution of India. The right to equality can only be claimed where there is discrimination by the State between the two persons who are similarly situate. It is true, the said principle cannot be invoked in cases where discrimination sought to be shown is between acts of different authorities functioning as 'State' under Article 12 of the, Constitution. The principle of 'equal pay for equal work' is attracted only when two sets of employees are similarly situated and are discharging the similar functions yet are getting different pay scales. In State of U.P. v. Ram Ashray Yadav and another AIR 1996 SC 1188, though the claim of Investigators-computers, who were appointed temporarily having lower qualifications for equal pay with the regularly appointed Investigator-cum-Computers having higher qualifications was disallowed, the Apex Court held that there can be no discrimination with regard to the payment of the emoluments between two categories of employees if they are discharging similar function and performing the similar duties.

13. *In the case of State of West Bengal and others v. Hari Narayan Bhowali, (1994) 4, SCC 78, the Supreme Court observed as under:-*

.....the principles of 'equal pay for equal work' can be enforced only after the persons claiming satisfy the Court that not only the nature of work is identical but in all respects they belong to the same class and there is no apparent reason to treat equals as unequals unless a very clear case is made out and the Court is satisfied that the scales provided to a group of persons on the basis of material produced before it amounts of discriminations without there being any justification, the Court should not take upon itself the responsibility of fixation of scales of pay.....

14. *The most important case on the point is Daily Rated Casual Department Employed under P & T Department though Bharitiya Dak Tar Mazdoor Manch v. Union of India, (1988) 1 SCC 122; AIR 1987 SC 2342, in which it was observed that it may be true that the petitioners in that case have not been regularly recruited but many of them had been working continuously for more than an year in the department and some of them have been engaged as casual labours for nearly 10 years. It was found that the denial of the privilege of 'equal pay for equal work' is nothing but something the workers to hostile discrimination. The Apex Court was of the view that such denial amounts to exploitation of labour. The Govt. cannot take the advantage of dominant position and compel any worker to work even as a casual labourer on starvation wages. It may be that casual labourer has agreed to work on such low wages. That he has done because he has not other choice. It is poverty that has driven him to that stage. Govt. should be a model employer. The Supreme Court was of the view that on the facts and in the circumstances of the case, the classification of employees into regularly recruited employees and*

casual employees for the purpose of paying less than the minimum of pay payable to the employees in the corresponding regular cadres, particularly in the lowest rungs of the department, where the pay scales are the lowest, is not tenable. In the context of the present controversy, the Supreme Court in Dharwad Distt. P.W.D.'s case 9supra), took into consideration the authority of the Larger Bench in Keshwan and Bharti vs. State of Karnataka, AIR 1973 SC 1461, where the Court said "the dominant objective in view was to ameliorate and improve the lot of the common man and to bring about socio-economic justice.

15. There is a plethora of decisions of the Supreme Court as well as this Court of fortify the conclusion that 'equal pay for equal work' for both the men and women has been accepted as constitutional goal capable of being achieved through constitutional remedies. Without unnecessarily burdening this judgment, it would be proper to make a passing reference to these authorities. They are AIR 1987 SC 2086. P.D. Gupta v. Lt. Governor, Delhi Administration, AIR 1987 SC 2049, Bhagwan Das v. State of Haryana, AIR 1988 SC 1504, Jai Pal v. State of Harayana JT 1988 (3) SC 120. The Dharwad District P.W.D.L.D.E.A. vs. State, (SC) AIR 1988 (SC) 717, U.Pl Income Tax Department Contingent Paid Staff Welfare Association vs. Union of India, AIR 1989 SC 1215 Bhagwan Sahai vs. Union of India, AIR 1989 SC 19, State of U.P. v. J.P. Chaurasia and AIR 1992 SC 173, Sandip Kumar and others v. State of U.P."

According to the petitioner his representation is still pending and has not been disposed of. In view of the aforesaid facts, the respondents are directed to consider the representation of the petitioner.

The petitioner apprehends that the department where he is working may not be abolished.

Without entering into the merits of the claims of the petitioner the respondents are directed to decide the representation of the petitioner in the light of the recommendations made in favour of the petitioner within a period of six weeks from the date of filing of the certified copy of this order.

Subject to the aforesaid observations, the writ petition is disposed of.

(Rajesh Tandon, J.)

NCM: